No. 02-1426

Supreme Court, U.S.
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In The
Supreme Court of the United States

RONALD G. CALHOUN,

Petitioner,

vs.

LILLENAS PUBLISHING, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents submit that the following question demonstrates the fundamental legal defect in Petitioner's suit:

> When there is uncontradicted evidence in a copyright infringement suit that the challenged work was independently created, and the plaintiff has failed to introduce any plausible evidence that the alleged infringer had a reasonable opportunity to view the allegedly infringed work prior to the creation of the challenged work, is the plaintiff automatically entitled to a jury trial on the issue of copyright infringement solely because the works are very similar?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondents C.A. Music, Inc., The United Methodist Publishing House and Word Music (collectively "Respondents") provide the following full and complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates, and parent corporations, and other identifiable legal entities related to the Respondents:

Baber, Bruce W.

Bates, Donald Alan

Blood-Dickman, Erica

Beacon Hill Music

Bible, Ken

Baptist Book Stores

Broadman & Holman

Buchan, Jeffrey

C.A. Music, Inc.

Calhoun, Ronald G.

Christian Copyright License International

Cokesbury Stores

Crystal Sea Recordings

Duane Morris LLP

Faith Music

Floria, Cam

Gaylord Creative Group, Inc. dba Word Music

Herman, John C.

Integrity Church Services

Integrity Music

King & Spalding

Lifeway Christian Resources dba Lifeway Christian Stores

Lillenas Publishing Company

McGee, Robert

McKay, John H.

Maranatha Music

Mathias, John

Music Services, Inc.

Nangle, The Honorable John F.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLSOURE STATEMENT – Continued

Nazarene Publishing House

Nelson/Word Ministry Services

Phillips, Lynda

Pilot Point Music

Psalmsinger Music

Richardson, James

The Southern Baptist Convention

The Sunday School Board of the Southern Baptist Convention Press

The United Methodist Church

The United Methodist Publishing House

Tolliver, Beth

Walsh, Ryan K.

Weathers, Hardy

Williams, Mark A.

Word Music

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STATEMENT OF THE CASE

I. COURSE OF THE PROCEEDINGS

This case involves a claim of copyright infringement asserted by the plaintiff, Ronald G. Calhoun, twenty-three years after the allegedly infringing song was created and released to the public. Calhoun's Petition for a Writ of Certiorari (the "Petition") asks whether the Eleventh Circuit Court of Appeals correctly affirmed the district court's dismissal of Robert G. Calhoun's claim for copyright infringement at the summary judgment stage. *Calhoun v. Lillenas Publ'g*, 298 F.3d 1228 (11th Cir. 2002) (Petitioner's Appendix ("Pet. App.") 1). Following the close of discovery, the district court issued a thorough 22-page order granting Respondents' motion for summary judgment, finding no copyright infringement as a matter of law. *Calhoun v. Nazarene Publ'g House*, Case No. CV 499-159 (N.D. Ga. 2001) (Pet. App. 2). The Eleventh Circuit affirmed the district court's order based on both (1) the absence of any evidentiary basis that the author of the allegedly infringing song had access to Calhoun's song "Before His Eyes"; and (2) the strong and unrefuted evidence that Bob McGee independently created the song "Emmanuel."

II. STATEMENT OF FACTS

A. Background

A minister named Bob McGee created the song "Emmanuel" in 1976 during a church service at The King's Temple Church in Seattle, Washington in the presence of several independent witnesses. These witnesses corroborated McGee's independent creation of the song during the service and the fact that McGee did so without any sheet

music, documents, or recordings of any kind. The song "Emmanuel" has been one of the most popular hymns in major Christian denominations throughout the past two decades. *Calhoun*, 298 F.3d 1228 (Pet. App. 1 at 5-6). In 1983, C.A. Music, Inc. ("C.A. Music") acquired the rights to "Emmanuel."

The Petitioner, Ronald Calhoun wrote the song "Before His Eyes" in 1969 while living in Georgia. This song appeared on a vanity album for which Mr. Calhoun paid Charisma Records over $2,000 to record and ship him copies in 1971. He has no records of any royalties received from his efforts to sell this album and has only received a total of $11 for all of his song publishing and performing rights royalties in his entire musical career. *Calhoun*, 298 F.3d 1228 (Pet. App. 1 at 4-5). The Eleventh Circuit, like the district court, found that "the evidence does not support Calhoun's claim that 'Before His Eyes' received widespread publicity." *Id.* at 13.

The district court and the Eleventh Circuit found that Bob McGee, when he wrote "Emmanuel" in 1976, had no actual access or reasonable opportunity to view Appellant's song "Before His Eyes." *Calhoun*, 298 F.3d 1228 (Pet. App. 1 at 13); *Calhoun*, Case No. CV 499-159 (Pet. App. 2 at 15). This finding is well supported in the record. So, too, is the finding that "Emmanuel" was independently created.

At the time that Bob McGee independently created the song "Emmanuel" in Seattle, Washington, the song "Before His Eyes" had probably not made it out of the Southeastern United States, and certainly not to the Pacific Northwest. McGee wrote "Emmanuel" without ever having seen or heard of Mr. Calhoun or his song "Before His Eyes."

B. The Eleventh Circuit Opinion

With respect to the songs "Emmanuel" and "Before His Eyes," the Eleventh Circuit did *not* make a legal finding of "striking similarity," which is a legal term of art. Instead, the Eleventh Circuit held that the songs were "practically identical." *Calhoun*, 298 F.3d 1228 (Pet. App. 1 at 9). Although this distinction may seem trivial, the difference in phrasing is significant, as a legal finding of "striking similarity" has a specific meaning in copyright jurisprudence that was clearly not reached by the Eleventh Circuit's holding. Indeed, the Eleventh Circuit's finding of independent creation implicitly demonstrates that the works are not "strikingly similar."

The Eleventh Circuit also held that:

> Given the limited number of musical notes (as opposed to words in a language), the combination of those notes and their phrasing, it is not surprising that a simple composition of a short length might well be susceptible to original creation by more than one composer.

Id. The Eleventh Circuit further emphasized that this statement is particularly true with respect to certain genres of music, like church music, and that the work at issue here was just a basic melody without lyrics, harmonic background, or accompaniment. *Id.* at 9 n.8. As a result, the Eleventh Circuit held that the alleged similarity between the songs did not necessarily evidence copying by McGee.

ARGUMENT

I. THE ELEVENTH CIRCUIT CORRECTLY AFFIRMED THE DISTRICT COURT'S DECISION TO GRANT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

The Court should deny Calhoun's Petition because it is based on a contortion of copyright law and factual assertions contradicted by the record. First, the uncontradicted evidence of McGee's independent creation of the song "Emmanuel" is easily sufficient to negate Calhoun's claim of copyright infringement as a matter of law, regardless of any alleged similarities between the songs. Second, Calhoun has failed to introduce any plausible evidence that McGee had access to "Before His Eyes" prior to the creation of "Emmanuel" in 1976, so Calhoun cannot meet any reasonable standard of access. Accordingly, the Eleventh Circuit's decision to affirm the district court's decision was appropriate in light of the general principles of copyright law, and Calhoun's Petition should be denied.

A. Copyright Law

1. The General Elements of Copyright Infringement

To prove a claim of copyright infringement, a plaintiff must show that he has ownership of a valid copyright in a work and that the defendant copied the "constituent elements of the copyrighted work that are original." *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). Where, as here, the plaintiff has no evidence of actual copying, he must instead show that his copyrighted work is substantially similar to the defendant's alleged infringing work and that defendant had access to plaintiff's

copyrighted work. *Herzog v. Castle Rock Entm't*, 193 F.3d 1241, 1248 (11th Cir. 1999). If a plaintiff cannot show actual access to the copyrighted work, a plaintiff can instead demonstrate that the defendant had a "'reasonable opportunity to view'" the copyrighted work to constitute access. *Id.* at 1249 (citation omitted).

2. The Doctrine Of "Striking Similarity"

If a plaintiff cannot show actual access or a reasonable opportunity to view the copyrighted work, courts have permitted a plaintiff to create an inference of copying and access circumstantially by showing that the two works are "so strikingly similar as to preclude the possibility of independent creation." *Ferguson v. National Broadcast Co.*, 584 F.2d 111, 113 (5th Cir. 1978). The Eleventh Circuit has described striking similarity as "when the similarity is so great **it precludes the possibility of coincidence, independent creation or common source.**" *Benson v. Coca-Cola Co.*, 795 F.2d 973, 975 n.2 (11th Cir. 1986) (emphasis added); *see also Herzog*, 193 F.3d at 1248-49 (describing striking similarity). Since the striking similarity test is an evidentiary short-cut to show copying, courts have held that the striking similarity test is a stringent requirement. *See, e.g., McRae v. Smith*, 968 F. Supp. 559, 567 (D. Colo. 1997) (court analyzes doctrine of striking similarity in the context of an infringement claim based on country music songs).

3. The Stringent Standard For The Infringement Of Musical Works

Copyright cases involving music are generally more scrutinized by courts than standard copyright infringement

cases, especially when they involve simple songs in popular styles. The Second Circuit has noted that a court must be "mindful of the limited number of notes and chords available to composers and the resulting fact that common themes frequently reappear in various compositions." *Gaste v. Kaiserman*, 863 F.2d 1061, 1068 (2d Cir. 1988). The Eleventh Circuit has indicated that the required degree of similarity may be higher in cases involving popular music as compared to other artistic works. *See Benson*, 795 F.2d at 975 n.2 ("striking similarity should address the uniqueness or complexity of the protected work as it bears on the likelihood of copying. . . . This is particularly important with respect to popular music, 'in which all songs are relatively short and tend to build on or repeat a basic theme.'") (citation omitted).

In applying the stringent requirement of striking similarity, numerous courts have rejected striking similarity claims in the song infringement context. *Benson*, 795 F.2d at 975 n.2; *Ellis v. Diffie*, 177 F.3d 503, 507 (6th Cir. 1999) (upholding district court's finding of no infringement because differences between songs implicitly precluded striking similarity despite the fact that the choruses of songs were substantially similar); *Selle v. Gibb*, 741 F.2d 896, 903-06 (7th Cir. 1984) (rejecting claim of striking similarity because plaintiff could not show similarity that reasonably precludes possibility of explanation other than copying due, in part, to relatively basic subject matter of pop song); *Tisi v. Patrick*, 97 F. Supp. 2d 539, 548 (S.D.N.Y. 2000) (in granting summary judgment to defendant finding no substantial or striking similarity between songs at issue, court held that "striking similarity test . . . is applied with particular stringency in cases . . . involving popular music"); *McRae*, 968 F. Supp. at 567 (in granting

summary judgment, court found no striking similarity between two country songs when commonplace elements in country music genre were filtered out of comparison).

B. Regardless Of The Songs' Similarity, The Plaintiff's Copyright Claim Still Fails As A Matter Of Law.

Even assuming the songs at issue in this case are "strikingly similar" – which they are not – the Eleventh Circuit's holding in this case was correct and adheres to the general principles of copyright law. In copyright cases, proof of actual copying is extremely rare. MELVILLE B. NIMMER AND DAVID NIMMER, *NIMMER ON COPYRIGHT* § 12.11[D]. As a result, courts have developed an evidentiary short-cut that allows copyright plaintiffs to create an inference of copying by establishing two elements: (1) that the works at issue are substantially similar, and (2) that the alleged infringer had access to the plaintiff's work. *Id.* Where the works at issue are found to be "strikingly similar," the court *may* infer access from "striking similarity." *Gaste*, 863 F.2d at 1068.

Even if the plaintiff establishes an inference of copying, however, a copyright defendant may *negate* any claim of infringement by proving that the allegedly infringing work was independently created. *Benson*, 795 F.2d at 975; *Proctor & Gamble Co. v. Colgate-Palmolive Co.*, 199 F.3d 74, 77-78 (2d Cir. 1999); *Girl Friends Prods., Inc. v. ABC, Inc.*, No. 99 Civ. 1541, 2000 U.S. Dist. LEXIS 14931 (S.D.N.Y. Sept. 30, 2000), *aff'd*, No. 00-9466, 2001 U.S. App. LEXIS 21851 (2d Cir. Oct. 11, 2001); *Simmons v. Western Publ'g Co.*, 834 F. Supp. 393, 396 (N.D. Ga. 1993) ("Uncontradicted evidence of independent creation **negates** a claim of infringement.") (emphasis added). Once

the defendant submits evidence of independent creation, the plaintiff has the burden of proving that the defendant actually copied the plaintiff's work. *Miller v. Universal Studios, Inc.*, 650 F.2d 1365, 1375 (5th Cir. 1981).

In the present case, C.A. Music's uncontradicted evidence of independent creation fully negates Calhoun's copyright claim, and does not simply create an issue of fact. As noted by the district court and the Eleventh Circuit, C.A. Music has introduced a significant amount of evidence demonstrating McGee's independent creation of the song "Emmanuel." For example, C.A. Music submitted an affidavit from McGee in which McGee testified under oath that he created the song "Emmanuel" in 1976 during a church service at The King's Temple Church in Seattle, Washington. C.A. Music has also introduced affidavits from individuals who witnessed McGee's creation of "Emmanuel" in 1976 and corroborated McGee's story. According to all of the affidavits, at the time McGee created the song, he had no sheet music, hymnals, records, tapes, versions or lead sheets of any other songs that he used to assist him. In addition, McGee also testified that, prior to this lawsuit, he had never heard of Calhoun or the song "Before His Eyes."

Calhoun has offered no evidence whatsoever to rebut this testimony. Instead, Calhoun now argues that the testimony from McGee and other individuals from The King's Temple Church lacks credibility and that it is unlikely that McGee could have created the song in the manner described in the affidavits.

Yet such conclusions are not probative evidence in a summary judgment proceeding. *See Ferguson*, 584 F.2d at 113 (rejecting argument that it was unlikely that defendant

could have come up with allegedly infringing song without having access to plaintiff's work). Moreover, on summary judgment, the court must give credence to the evidence supporting the moving party that is uncontradicted and unimpeached. *Peel & Co. v. Rug Market*, 238 F.3d 391, 394 (5th Cir. 2001). Indeed, "[t]he testimony of credible witnesses concerning a matter within their knowledge cannot be rejected without some impeachment, contradiction, or inconsistency with other evidence on the particular point at issue." *Selle*, 741 F.2d at 903.

Calhoun had ample opportunity during discovery in this case to obtain and introduce evidence that would serve to either contradict the testimony in the affidavits from The King's Temple Church or impeach the affiants themselves. Nonetheless, Calhoun did not introduce a single piece of evidence or testimony to contradict or impeach the evidence of independent creation. Calhoun's eleventh hour attempts to challenge the evidence of independent creation amount to nothing more than speculation and conjecture as to the inspiration behind McGee's creation of the song "Emmanuel." Such challenges are not only procedurally improper, *see Peel & Co. v. Rug Market*, 238 F.3d 391, 394 (5th Cir. 2001), but they clearly do not constitute a sufficient evidentiary basis to rebut McGee's evidence of independent creation. *See Benson*, 795 F.2d at 975.

In light of C.A. Music's uncontradicted evidence of independent creation, the Eleventh Circuit's affirmance of the district court's decision in this case was justified.

C. Calhoun's Claim Fails As A Matter Of Law Because Calhoun Could Not Prove A Reasonable Possibility Of Access.

Calhoun cannot satisfy the elements necessary to create an indirect inference of copying. In order to create such an inference, a plaintiff must demonstrate that the alleged infringer had at least a reasonable opportunity to view the allegedly infringed work. *Herzog*, 193 F.3d at 1249. Bare speculation regarding possible access is not sufficient to meet the access requirement. *Id.* at 1250; *see also Selle*, 741 F.2d at 901; *Bouchat v. Baltimore Ravens, Inc.*, 241 F.3d 350, 356 (4th Cir. 2000).

In the present case, both the Eleventh Circuit and the district court found that Calhoun had failed to introduce any evidence that McGee had a reasonable opportunity to see or hear "Before His Eyes" prior to 1976. This finding is well supported by the record, which demonstrates that "Before His Eyes" received very little public exposure. Calhoun has absolutely no evidence that his song was ever played or broadcast in the Pacific Northwest between 1969 and 1976. *Id.* At the time that McGee independently created the song "Emmanuel" at The King's Temple Church in Seattle, the song "Before His Eyes" had probably not made it out of the Southeastern United States, and certainly not to the Pacific Northwest. In the absence of a reasonable possibility of access, Calhoun's claims fail as a matter of law.

Calhoun argues that this Court should endorse a sliding scale test that would allow for a lesser showing of access when the works at issue are extremely similar. Calhoun further argues that the works at issue here are very similar and that he has submitted sufficient evidence to meet this lessened standard for access.

The Eleventh Circuit, however, has never utilized such a sliding scale test in copyright cases. In fact, a sliding scale approach may not be compatible with this Court's ruling in *Feist*, which limits actionable similarities to original, protectable elements. *Feist*, 499 U.S. at 361.

More importantly, even if a minimal standard for access is appropriate, Calhoun still must present some plausible evidence showing that McGee might have had access to "Before His Eyes" before the creation of "Emmanuel." Calhoun cites the Seventh Circuit's *Selle* case as the basis for a sliding scale test, but the appellate court in that case held:

> Thus, although it has frequently been written that striking similarity **alone** can establish access, the decided cases suggest that this circumstance would be most unusual. **The plaintiff must always present sufficient evidence to support a reasonable possibility of access because the jury cannot draw an inference of access based upon speculation and conjecture alone.**

741 F.2d at 901 (emphasis added). While "striking similarity alone can raise an inference of copying, **that inference must be reasonable in light of all the evidence.**" *Bouchat*, 241 F.3d at 356 (emphasis added); *Gaste*, 863 F.2d at 1068 (Where the works at issue are found to be "strikingly similar," the court *may* infer access from "striking similarity," but it need not do so). "It is clear that a showing of striking similarity does not per se relieve the

plaintiff of his burden of establishing access."[1] *Bouchat*, 241 F.3d at 356.

The Sixth Circuit faced a similar factual situation in *Takeall v. Pepsico, Inc.*, 29 U.S.P.Q.2d 1913 (4th Cir. 1993).[2] In that case, the plaintiff entertainer alleged to have utilized a phrase in his ventriloquist act later adopted by Pepsi in a nationwide marketing campaign. Like Calhoun, Takeall's act received limited public exposure. *Id.* at 1914. Nonetheless, Takeall argued (as has Calhoun) that the two works at issue were "strikingly similar," so a lower standard of proof of access was required. *Id.* at 1915.

The Fourth Circuit assumed the works were "strikingly similar," but still rejected the plaintiff's argument. The appellate court held that, even where works are "strikingly similar," it does not per se eliminate the need for evidence of some reasonable possibility of access. *Id.* at 1916. The court further held that the limited public

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[1] There are federal circuit cases that hold that proving "striking similarity" between the works removes the requirement of also proving access. *See Baxter v. MCA, Inc.*, 812 F.2d 421, 423 n.2 (9th Cir. 1987). Yet the songs at issue here are not strikingly similar. Moreover, even if the songs are strikingly similar, the uncontradicted evidence of independent creation negates any inference of copying created by a finding of striking similarity. (*See* Section I (B), *supra*).

[2] Calhoun claims in his Petition that "there appear to be no cases from other circuits where, as here, a showing of striking similarity was made, but the issue of independent creation was decided against the plaintiff as a matter of law based upon the defendant's claim of independent creation." This is false. First, there was no finding of "striking similarity" in this case, as shown above. Second, the *Takeall* case presents just such a situation. Indeed, the Fourth Circuit rejected the exact same argument made here by Calhoun.

dissemination of the work – which appears to be more widespread than the distribution of Calhoun's work in this case[3] – was insufficient to form the basis for an inference of access.[4] *Id.* at 1916-17. In the present case, the absence of any probative evidence that there was a reasonable possibility that McGee had access to "Before His Eyes" prior to 1976 warranted the dismissal of Calhoun's claim at summary judgment.

Calhoun has also argued that he did not need to prove access because the Eleventh Circuit found that the songs at issue are "strikingly similar." This argument also fails because the Eleventh Circuit never made a legal finding of "striking similarity" in this case. Instead, the appellate court found that the two songs are "practically identical." *Calhoun*, 298 F.3d 1228 (Pet. App. 1 at 9). While seemingly trivial, this distinction is critical because a finding of

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[3] In fact, Takeall's act seems to have received greater public exposure than Calhoun's, as Takeall traveled to different areas of the country to perform.

[4] In his effort to demonstrate that McGee had access to "Before His Eyes" – which received extremely little public exposure – Calhoun consistently emphasizes that McGee, as a preacher in a "musical church," was among the most likely people to be exposed to Calhoun's music. Such statements constitute both speculation and hypocrisy. Calhoun began serving as the organist of a Methodist church in 1989. Since that time, Calhoun's Methodist church used a hymnal that contained the song "Emmanuel," one of the most popular gospel hymns during the relevant period. Nonetheless, in order to circumvent the Copyright Act's statute of limitations provision, Calhoun has maintained that he neither heard nor saw the song "Emmanuel" until 1997. As the district court pointed out, if Calhoun had used "an iota of diligence" he would have encountered the song "Emmanuel" long before. Calhoun's attempt to argue now that McGee's position in a "musical church" somehow demonstrates that McGee had access to "Before His Eyes" should therefore be ignored.

"striking similarity" can create an inference that McGee had access to "Before His Eyes," which Calhoun cannot establish through the evidence in the record.[5]

Moreover, the remainder of the Eleventh Circuit's opinion demonstrates that no finding of "striking similarity" can be inferred from the use of the phrase "practically identical." For instance, in order for two works to be "strikingly similar" in the context of a copyright infringement analysis, the works must be "so strikingly similar **as to preclude the possibility of independent creation.**" *Ferguson*, 584 F.2d at 113; *see also Benson*, 795 F.2d at 975 n.2. As one copyright treatise explained,

> [E]ven when similarity is verbatim, it may not constitute "striking similarity" if what is common to both works is commonplace, or at least sometimes found in other works. In such circumstances, the similarity between the two works may be explained by a common source, or even by coincidental similarity.

MELVILLE B. NIMMER AND DAVID NIMMER, *NIMMER ON COPYRIGHT* § 13.02[B]. The Eleventh Circuit found that "Emmanuel" was independently created as a matter of law, implicitly rejecting any finding of "striking similarity."

In the *Benson* case, the plaintiff songwriter also tried to avoid the necessary showing of access by arguing that the songs were strikingly similar. 795 F.2d at 974-75. The

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[5] As the Seventh Circuit pointed out, the term "strikingly similar" is often used in a conclusory or circular fashion, so it can be difficult to propound a meaningful definition of the term. *See Selle*, 741 F.2d at 903.

plaintiff relied on an expert who had testified that "the works were so similar that the average listener would believe them the same." *Id.* at 975 n.2. The court rejected the plaintiff's argument that no proof of access was necessary, stating that "[the expert's] opinion does not address the crucial element of 'striking similarity': that the only possible explanation is copying." *Id.*; *see also Selle*, 741 F.2d at 904 (rejecting "striking similarity" argument where plaintiff's expert, while using the magic words "striking similarity," only ruled out the possibility of independent creation without affirmatively saying that similarities could only be the result of copying).

Likewise, the Eleventh Circuit in this case never found that the only explanation for the songs' similarities was copying by McGee. Indeed, the Eleventh Circuit found that the uncontradicted evidence in the record demonstrated that McGee had not copied the work as a matter of law, but had instead independently created "Emmanuel." Further, the Eleventh Circuit, like the appellate court in *Benson*, found that, given the simple nature of the work, "it is not surprising that a simple composition of a short length might well be susceptible to original creation by more than one composer." *Calhoun*, 298 F.3d 1228 (Pet. App. 1 at 9); *see also Benson*, 795 F.2d at 975 n.2; *Selle*, 741 F.2d at 904 (holding that "striking similarity" doctrine should be limited to works involving sufficiently unique or complex subject matter).

Because McGee did not have a reasonable opportunity to see or hear "Before His Eyes" prior to 1976, Calhoun's copyright claim fails as a matter of law. In addition, the songs at issue are not strikingly similar, and the Eleventh Circuit made no such finding. Accordingly, the Eleventh

Circuit's affirmance of the district court's decision was correct.

CONCLUSION

WHEREFORE, because the courts below have properly interpreted and applied the principles of copyright law, Respondents respectfully request that the Court deny the Petition for Writ of Certiorari.

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